Kerala Gazette No. 35 dated 6th September 1983,
PART I A

GOVERNMENT OF KERALA

Election Department

NOTIFICATION

No. 3193/EL1/83/Elec.

Dated, Trivandrum, 15th June 1983.

Notification No. 82/KL-LA/15/82 dated nil May 1983 of the Election Commission of India is published.

By order,
R. RAMACHANDRAN NAIR,
Chief Electoral Officer.

SECRETARIAT OF ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashok Road,
New Delhi-1.

No. 82/KL-LA/15/82.

Dated, May 1983.

NOTIFICATION

No. 82/KL-LA/15/82.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgement of the High Court of Kerala at Ernakulam dated 3rd February, 1983 in Election Petition No. 15 of 1982.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

The Honourable Dr. Justice T. Kochu Thommen

Thursday the 3rd February 1983/14th Magha 1904

ELECTION PETITION No. 15 OF 1980

Petitioner:

T.S. Abraham Samuel,
Ayyanthiyil, Thonniamala P.O.,
Ward No. 3,
Pathanamthitta Municipality,
Pathanamthitta.

By Advs. M/s K. Ramakumar,
B. Satheeshchandran
C.P. Ravindranath and
Varghese Myloth.

Respondent:

K.K. Nair alias K. Karunakaran Nair,
Kulapurakkal House,
Pioneer Cottage,
Mundukottakkal P.O.,
Vettippuram,
Pathanamthitta.

By Advocates M/s V.M. Nayanar and V. Rajendran

This Election Petition having been finally heard on 21-1-1983 having stood over to this day for consideration this court delivered the following:—

JUDGMENT

The petitioner who is a voter in No. 112 Pathanamthitta Assembly Constituency prays for a declaration that the election of the respondent from the said constituency to the Kerala Legislative Assembly was void on the alleged grounds of non-compliance with the statutory provisions and corrupt practices. In the election held on 19-5-1982, the result of which was declared on the following day, the respondent who was an independent candidate Supported by the United Democratic Front (the "U.D.F.") secured 36,676 votes while his principal rival K. V. Joseph who was an independent candidate sponsored by the Left Democratic Front (the "L. D. F.") secured 27,217 votes. The respondent was thus declared elected with a majority of 9,459 votes over his principal rival.

2. The principal allegations of the petitioner are: The order in which the names and symbols of the candidates were printed in the ballot papers was different from the order in which they appeared in the list of contesting candidates in violation of Rules 10 and 30 of the Conduct of Election Rules, 1961 (the "Rules"). In the list of candidates supplied to each candidate and also affixed in the office of the Returning Officer at Quilon on 28th April 1982, the names of the candidates and their symbols were shown as follows:

1.	V.N. Unni	— Lotus
2.	K.K. Nair	— Cycle
3.	Johan Jacob	— Rising Sun
4.	K.V. Joseph	— Scale

However in the ballot papers issued on the date of polling, that is 19th May 1982, the names and symbols had been arranged as follows:

1.	V.N. Unni	— Lotus
2.	Johan Jacob	— Rising Sun
3.	K.V. Joseph	— Scale
4.	K.K. Nair	— Cycle

While the respondent K.K. Nair figured as No. 2 and K.V. Joseph as No. 4 in the list supplied on the 28th April 1982, K.V. Joseph and K. K. Nair with their symbols appeared in the ballot papers as No. 3 and No. 4 respectively. This caused confusion in the minds of the electors who had been instructed by Joseph's agents and workers, by means of sample ballot papers prepared on the basis of the list of 28th April, to vote for the last candidate. On account of the change of the order in which the names and symbols appeared in the ballot papers, considerable prejudice was caused to K. V. Joseph because a number of his supporters and sympathisers among the electors were illiterate persons who, believing that the last person shown in the ballot paper was K. V. Joseph, thereby unwittingly registering their votes in favour of the respondent. Considerable prejudice was thus caused to K. V. Joseph to the advantage of the respondent.

3. It is alleged that the respondent committed the corrupt practice of bribery within the meaning of Section 123 (1) of the Representation of the People Act, 1951 (the "Act"). Posters were printed on behalf of the U. D. F. by P. K. Sasidharan, Secretary of the Pathanamthitta District Formation Committee, containing an appeal to vote for the respondent and prominently showing the outline of the proposed Pathanamthitta District. These posters which were widely distributed among the electors all over the constituency conveyed the idea that the respondent was closely identified with the formation of the proposed district of Pathanamthitta and that votes cast in his favour were votes in support of the new district. This was an inducement within the meaning of Section 123 (1). It is also alleged that the respondent committed the corrupt practice defined under Section 123(3) by making an appeal on the ground of religion and to religious symbols. Photographs in which the respondent is seen in the company of his Holiness

Marthoma Mathews First, Catholicos of the East and the Malankara Metropolitan were cause to be published by or with the knowledge of the respondent in the Kottayam edition of Deepika and Malayala Manorama dated 12-5-1982. These photographs were intended to convey to the electorate the impression that the respondent had the support of the Malankara Metropolitan who is the religious head of the Orthodox Syrian Community considerable prejudice to K.V. Joseph to the advantage of the respondent. According to the petitioner, the Malankara Metropolitan's visit to Pathanamthitta was taken advantage of by the respondent and the leaders of the U. D. F. For those reason it is alleged that the election of the returned candidates is vitiated by reason of corrupt practices and non-compliance with the statutory provisions as provided under Section 100 (1) (b) and (d) (iv) read with Section 123 (1) and (3) of the Act.

4. These allegations are specifically denied by the respondent in his written statement dated 4-8-1982. He has denied that the order in which the names and symbols of the respective candidates appeared in the ballot papers was different from the order in which they were shown in the revised list of candidates published in Form 7-A on 29-4-1982 and 5-5-1982. The original list dated 28th April was revised on the request of some of the candidates including K. V. Joseph. It was in accordance with the revised list that the names and symbols were printed in the ballot papers. There was, therefore, no violation of any statutory provision. In any event, the respondent denies that any prejudice was caused to K.V. Joseph on account of the order in which the names and symbols appeared in the ballot papers. As regards the allegation of bribery within the meaning of Section 123(1), the respondent of bribery within the meaning of Section 123(1), the respondent says that all the candidates including K.V. Joseph were equally interested in the formation of the proposed district and the Government had long prior to the election appointed Smt. Mini Mathew, I. A. S., as Special Officer to report on the various steps taken for the formation of the district. The formation of the district was long prior to the election a *fait accompli*. There was absolutely no need for the respondent to provide the electorate with any inducement in connection with the formation of the district and the respondent did not make any promise in that behalf. The respondent further says that the publication of the photographs in the newspapers was not made with the consent or knowledge of the respondent nor was it done for the purpose of furthering the respondent's prospects in the election or prejudicially affecting the election of K. V. Joseph. His Holiness the Malankara Metropolitan did not participate in any function connected with the respondent's election campaign and his presence in the Catholicate College compound was solely for the purpose of receiving the Prime Minister who landed there by helicopter when she visited Pathanamthitta. The respondent has thus denied all the allegations concerning non-compliance with the statutory provisions and corrupt practices. He has further stated that the petition is liable to be rejected by reason of non-compliance with the statutory requirements.

5. On the basis of the above averments the following issues were settled in the presence of counsel on both sides and after discussing the same with them;

1. Is the petition liable to be rejected for non-compliance with the provisions of the Representation of the People Act, 1951?
2. Is there a violation of Rules 10 and 30 of the Conduct of Election Rules, 1961, in the conduct of elections in the 112 Pathanamthitta assembly constituency, and if so, whether such violation has materially affected the result of the election, is so far as it concerns the respondent ?
3. Was there publication of posters indentifying the respondent with the proposed formation of Pathanamthitta district, so as to constitute a corrupt practice within the meaning of section 123(1) of the Representation of the People Act ? If so, has it affected the validity of the election of the respondent ?
4. Was there publication of the photographs of the respondent with a religious head, as alleged in the petition, so as to constitute corrupt practice within the meaning of section 123(3) and 3A of the Representation of the People Act ? If so, has it affected the validity of the election of the respondent ?
5. Is the election of the respondent liable to be declared void on account of the non-compliance with the provisions of the Representation of the people Act, and the rules formed thereunder and for corrupt practices ?
6. What, if any should be the order as to costs ?

6. In the course of the arguments, Shri Ramakumar counsel for the petitioner submitted that the petitioner did not wish to press issue No. 4 concerning corrupt practice within the meaning of section 123(3) and (3A) of the Act. Counsel for the respondent Shri V. M. Nayanar submitted that the respondent did not wish to press issue No. 1 Shri Ramakumar and Shri Nayanar agreed that, in the circumstances, no finding was called for on issue No. 1 or issue No. 4. They have made endorsements to such effect (vide issues dated 12-8-1982). Accordingly I shall not enter any finding on issue No. 1 or No. 4.

7. *Issue No.* 2. The allegation is that the names and symbols of the respective candidates appeared in the ballot papers in a different order form that in which they appeared in the list of candidates. This is stated to be a violation of Rules 10 and 30 of the Rules. The petitioner says as P. W. 1 that 30% of the electorate of No. 112 Pathanamthitta L. A. Constituency are constituted by illiterate persons who were instructed to vote for the last name and symbol in the ballot paper on the assumption that the names in the ballot papers would be shown in the order in which they appeared in the list of candidates. On account

of the change of the order a large section of the electorate had been misled and they voted for K. K. Nair whose name appeared fourth in the ballot paper under the impression that they voted for K. V. Joseph whose name figured as fourth in the list of candidates. Accordingly he says the result of the election, in so far as it concerns the returned candidate, has been materially affected. The petitioner's case on this point is supported by P.Ws.4, 5, 6, 7, and 11. P. W. 7 (K. V. Joseph) was the principal opponent of the returned candidate. K. K. Nair (R.W.1). While Joseph was allotted the symbol of scale ( ) K. K. Nair's symbol was a cycle. P.W. 1 (the petitioner) and P. W. 6 (Suresh Babu) are admittedly supporters of K. V. Joseph. Their evidence as well as that of K. V. Joseph (P.W. 7). being interested testmony must be viewed with caution. P.Ws. 4, 5 and 11 have deposed as representatives of the 30% electorate who were alleged to be the illiterate. Both P.Ws. 4 and 5 have no difficulty in reading Malayalam. When one of the model ballot papers, Ext. P3. was shown to these witnesses they read the names of the candidates with ease and correctly. Their evidence has therefore no value to support the petitioner's contention that a large number of persons could not read the names of the candidates in the ballot papers. P.W. 11 however, could not read the names when Ext. P8, which is K. V. Joseph's model ballot papers, was shown to her. Though an illiterate person, she had no difficulty in recognising Joseph's symbol. She correctly said it was a " ത്രാസ് " (scale). However, when the model ballot paper was kept up side down, the witness admitted that she could not recognise the last name. This shows that it was easier for her to recognise the symbol rather than the last name. This belies the petitioner's contention that the illiterage persons voted by the place in the list which was allotted to the candidate rather than by his name or symbol. No other witness who spoke on the side of the petitioner claims to be an illiterate person. Since P. W. 4, 5 and 11 do not support the petitioner's case on the point, the petitioner has failed to adduce any credible evidence to support his contention that illiterate persons voted by the place allotted to a candidate and were incapable of voting by the name or symbol.

8. Certain facts are not in controversy. Both K. V. Joseph (P.W. 7) and K. K. Nair (R.W. 2) preferred to have their names shown in the list of contesting candidates in a shortened form. Although Joseph was mentioned as Joseph Varghese and K. K. Nair as Krishnan Nair Karunakaran Nair in their nomination papers they requested the Returning Officer in writing that in the list of contesting candidates Joseph Varghese should be shortened to K. V. Joseph and Krishnan Nair Karunakarana Nair to K. K. Nair. This request was acted upon by the Returning Officer when he prepared the list of validly nominated candidates in form 4 and the list of contesting candidates in Form 7.A K. V. Joseph admits that the controversy regarding the names had ended before Ext. P7 (the list of contesting candidates prepared on 28-4-1982) was handed over to the candidates by the Returning Officer. Joseph has no complaint about Ext. P7. In that list the name K. V. Joseph appears as No. 4 and against his name is mentioned his allotted symbol 'scale' (ത്രാസ്). K. K. Nair appears as No. 2 and against his name

is mentioned his allotted symbol "cycle". In Ext. P7, V. N. Unni and John Jacob, who are the other two candidates, are shown as No. 1 and No. 3 respectively, with their respective symbols 'lotus' (താമര) and 'rising sun' (ഉദയസൂര്യൻ) indicated against their names. Neither Joseph nor Nair has any complaint about the shortened forms in which their names are shown in Ext. P7. However Nair pointed out that the names should be arranged in the order of Malayalam alphabets by placing his name below that of Joseph. The receipt of Ext. P7 was duly acknowledged by the candidates. It was put on the notice boards but it had not been published in the gazette. Now begins the controversy. I shall first deal with Joseph's version of what happened.

9. He says that he was not given any further list of contesting candidates than Ext. P7. He is not aware of the existence or much less the publication of any other list. On the basis of Ext. P7 he prepared the sample ballot paper (Ext. P8), showing his name as the last, and distributed about 25,000 copies of it all over the constituency. About 30% of the electorate are illiterate and about half of them are Harijans. All these people are sympathisers of the L.D.F. Being illiterate they had been instructed to vote for the fourth candidate. By change of place their votes went to the wrong candidate, viz., K. K. Nair, and not to himself as they were expected to vote, as a result of such alteration in the order of names, he lost thousands of votes, thereby materially affecting the result of the election. His version is supported by P. W. 1 (the petitioner) and P. W. 6 who are admittedly his active supporters. V. N. Unni (P.W. 10) was the candidate of the Bharatheeya Janatha Party (B.J.P.) and he was one of the discontented candidates having lost the election. He also supports Joseph's version that the list of candidates supplied to them was Ext. P7 and no other list.

10. I shall now examine the evidence of R.W. 2 the Returning Officer, who is a responsible officer of the Government and is naturally therefore a disinterested person. He says that on receiving Ext. P7 dated 28-4-1982, K. K. Nair pointed out that, arranging the names in the order of Malayalam alphabet, 'Nair' which begins with the letter 'N' should be placed below 'Joseph' which begins with the letter 'J' ജ. He did not at that time favourable react to Nair's request, for, in the nomination paper submitted by Nair his name is mentioned as Krishnan Nair Karunakaran Nair and accordingly the letter 'K' or 'ക' should be placed above 'J' or 'ജ'. On the 28th itself R. W. 2 forwarded Ext. P7 to the Chief Electoral Officer and to the Election Commission of India. The very same evening he had a discussion with the Deputy Chief Electoral Officer on the Telephone when the latter told him that the names in Ext. P7 had not been placed in the order warranted in terms of the instructions contained in the Handbook for Returning Officers issued by the Election Commission in 1982, where at page 31 it is stated:

> "The initials, if any, prefixed to the name of a candidate should be ignored for the aforesaid purpose. Thus in the case of a candidate giving his name as 'T. K. Reddy' the place

of that candidate in the list of contesting candidates according to alphabetical order should be determined with reference to the letter 'R' and not 'T'."

Accordingly R. W. 2 requested the Deputy Chief Electoral Officer to alter the order of names and symbols in the list (Ext. P7) in accordance with the directions in the Handbook and forward the list to the press for publication. It was so done by the Deputy Chief Electoral Officer. The list, as corrected, is published in the Kerala Gazette (Extraordinary) dated 29-4-1982 at P. 117. A copy of the Gazette and the list are marked as Exts. R2 & R2 (a). A revised list was on this basis subsequently prepared by the Returning Officer, copies of which were sent to the Election Commission of India and the Chief Electoral Officer as well as to the candidates. Copies were also affixed on the notice boards of the Returning Officer, the Assistant Returning Officer and the Taluk Officer. Exts. R1 and R1(a) respectively are copies in Malayalam and English of the revised list. These are dated 5-5-1982. Ext. R1 (b) is the covering letter of the same date sent to K. K. Nair along with Exts. R1 and R1 (a). The covering letter Ext. R1 (b) shows that it was endorsed to all the other candidates also.

10-A. However, Joseph (PW. 7) says that he did not receive the revised list, Ext. R1. He further says that he had no knowledge of the publication of any such revised list in the gazette or its affixture on the notice boards stated by the Returning Officer.

11. Joseph is a practising advocate and a respectable person. I should therefore be extremely reluctant to disbelieve him. Nor am I at the same time prepared to disbelieve and the Returning Officer, who, as I stated earlier, is a responsible officer of the Government having no reason to be prejudiced in favour of or against a particular candidate. In the circumstances I would for the present look at the facts on the assumption that the Returning Officer did sent Exts. R1 R1 (a) and R1 (b) to all the candidates, including Joseph, and that he did affix that list on the notice boards as stated by him. But Joseph, I assume did not receive the revised list or see it on the notice boards. I would also assume that Joseph in fact failed to notice that the list had been published in the gazette dated 29-4-1982 [Exts. R2 and R2 (a)]. I shall now examine the legal implication of these facts.

12. Publication of a list in the gazette is notice to the entire public. Joseph is thus deemed to have been duly notified of the list. Whether or not Joseph did in fact receive a copy of Ext. R1 or see it on the notice boards or in the gazette, he is in a law credited with the knowledge of the list. Joseph cannot therefore disclaim the knowledge.

13. With this preliminary observation I shall look at the relevant provisions. Rule 10 provides:

"10. *Preparation of list of contesting* candidates............(1) The list of contesting candidate referred to in sub-section (1) of section 38 shall be in Form 7A or Form 7B as may be appropriate and shall contain the particulars set out there in and shall be prepared in such language or languages as the Election Commission may direct.

(2) (Omitted by Notification No. S. O. 3662 dated 12th October, 1964).

(3) If the list is prepared in more languages than one, the names of candidates therein shall be arranged alphabetically according to the script of such one of those languages as the Election Commission may direct.

(4) At an election in a parliamentary or assembly constituency, where a poll becomes necessary the returning officer shall consider the choice of symbols expressed by the contesting candidates in their nomination papers and shall, subject to any general or special direction issued in this behalf by the Election Commission.—

(a) allot a different symbol to each contesting candidates in conformity, as far as practicable, with his choice; and

(b) if more contesting candidates than one have indicated their preference for the same symbol, decide by lot to which of such candidates the symbol will be allotted.

(5) The allotment by the returning officer of any *symbol* to a candidate shall be *final* except where it is inconsistent with any directions issued by the Election Commission in this behalf in which case the Election Commission may revise the allotment in such manner as it thinks fit.

(6) Every candidate or his election agent shall forthwith be informed of the symbol allotted to the candidate and be supplied with a speceimen thereof by the returning officer".

(emphasis supplied)

sub-rule (5) says that the allotment of a symbol is final and it cannot be altered except in the circumstances and the manner referred to in the sub-rule. The list of contesting candidates is prepared in Form 7-A (Form 7-B is not applicable in the present case). That Form prescribes the following particulars; viz. Name of Candidate, Address of Candidate and symbol allotted. The finality of sub-rule (5) attaches only to the symbol. There is nothing in the rule which inhibits the correction of the list in regard to the other particulars, at any rate before its publication in the gazette.

14. Rule 11 says:

"11. *Publication of list of contesting candidates and declaration of results in uncontested election.*—(1) The returning officer shall, immediately after its preparation, cause a copy of the

list of contesting candidates to be affixed in some conspicuous place in his office and where the number of contesting candidates is equal to, or less than the number of seats to be filled, he shall immediately after such affixation, declare under sub-section (2), or as the case may be, sub-section (3) of section (53) the result of the election in such one of the Forms 21 to 21B as may be appropriate and send signed copies of the declaration to the appropriate authority, the Election Commission and the Chief Electoral Officer.

(2) If a poll becomes necessary under sub-section (1) of section 53, the Returning Officer shall *supply* a copy of the list of contesting candidates to each such candidates or his election agent, *and then shall also publish* the list in the Official Gazette."

Sub-rule (2) says that should a poll become necessary, a copy of the list has to be *supplied* to each of the candidates or his election agent "*and then shall also publish the list* in the Official Gazette." The petitioner's counsel Shri Ramakumar contends that Ext. P7 having been given to the candidates should not have been revised for the rules do not provide for revision. He further contends that even if Ext. P7 is capable of revision, the revised list ought to have been notified and published in the manner laid down under subrule (2). This means, he says, the copy of the revised list should be given to each candidate or his election agent *and then* it has to be published in the Official Gezette. Counsel says that it is not admitted that Ext. R1 had been supplied to all the candidates, for Joseph did not receive it. Even if the Returning Officer had sent the list to Joseph, such despatch is not a "supply" as stipulated by the rule in so far as the list was not received by Joseph. He further says that even assuming that Joseph received the list, such receipt could only have been subsequent to the publication of the same in the Gazette and not prior to it as warranted by the rule. He refers to the fact that Exts. R1, R1 (a) and R1 (b) are dated 5-5-1982 while the publication of Ext. R2 (a) in the Gazette was as early as 29-5-1982. Thus the order of "supply" and publication postulated by the rule is reversed by the Returning Officer and he has thus failed to act in accordance with the law.

15. As I stated earlier, the finality under Rule 10 is attached only to the allotted symbol. The rule does not specifically prohibit or inhibit any alteration in regard to the other particulars. This at any rate is the position during the preparation of the list and prior to its publication. But once the list has been published, the correction must also be duly published. If a list has been affixed on the notice board as provided

under Section 11 (1), any correction carried out in the list must also be duly notified to the contesting candidates by affixture in the manner as provided under Rule 11 (1). Likewise if a list has been published in the Gazette as provided under Rule 11 (2), any correction must also be notified to the public by means of publication in the Gazette. The authority competent to notify is equally competent to add to, amend, vary or rescind such notification in like fashion in which the original notification was made. This is the principle of section 21 of the General Clauses Act, which must per force govern the construction of the relevant rule here. Even if Ext. P7 in the unrevised form had been published in the Gazette, it would still have been capable of revision by publication in the like manner. In the present case Ext. P7 was admittedly not published in the Gazette. It was only notified to the candidates by giving each of them a copy and by affixing the same on the notice boards. These is nothing under the rules which prohibits a variation of Ext. P7 in the like fashion in which it was issued. This is what was done by Exts. R1, R1 (a) and R1 (b). The variation was notified by sending a copy of the revised list to each of the candidates and by affixing the same on the notice boards. It was also published in the Gazette dated 29-4-1982.

16. However, two difficulties are pointed out by the petitioner's counsel. He says, assuming that Ext. R1 is treated as a valid list of contesting candidates, it had still not been published in the manner provided under Rule 11 (2). The list has not been "supplied" to the candidate so long as its receipt by Joseph has not been established, and secondly its publication in the Gazette has not been made subsequent to the receipt of the list by the candidate, but prior to it.

17. The evidence of the Returning Officer only shows that Ext. R1 was despatched. There is no evidence that it has been received by Joseph. The respondent says that he has himself received it. But the respondent cannot prove that Joseph did receive it. He has no burden to prove that fact. Nor can he be penalised for the failure of the Returning Officer to sent Ext. R1 series to Joseph by registered post, however desirable such a precaution would have been. Although neither the petitioner nor Joseph can be expected to prove the nagative fact of failure to receive, the respondent himself has no burden to establish that Joseph did receive the list.

18. The question is whether the list has been "supplied" to Joseph in the manner provided under Rule 11 (2). As I stated earlier, I see no reason to disbelieve the statement of the Returning Officer that he did send Ext. R1 to Joseph. The question then is whether that fact constitutes "supply" if it has not been established that what was sent was in fact received by Joseph.

19. To supply is to furnish or provide. (See Black's Law Dictionary; New Webster's Dictionary of the English Language). When a list is despatched by handing over the same to a Post Office for delivery in the

normal course, there is sufficient supply to satisfy the requirement of Rule 11 (2). The expression "supply" under the rule does not postulate anything more than despatch of the list in the normal course. This is clear from the intent of the rule-making authority as can be gather of from the sub-rule. The object is to make sure that, in the event of a contest becoming necessary, the candidate is supplied with a copy of the list which has already been notified by affixture in some conspicuous place in the office of the Returning Officer as provided under Rule 11 (1). In the absence of a contest affixture alone is sufficient notice. But when a contest becomes necessary, the rule postulates, in addition to such affixture, individual notice coupled with publication in the Gazette Publication in the gazette is the special safe guard provided under the rule so that no person can be heard to say that he did not know of the list notwithstanding the affixture of "supply" of the same. What is therefore intended by the rule is to make sure that what has been affixed and later "supplied" is in law received by the contesting candidates. Publication in the gazette being notice to the entire public, no contesting candidate can disclaim knowledge of what is published. Supply of the list in addition to publication is only for the personal convenience of the candidates. Since the supply is followed under the rule by publication in the gazette, the R e t u r n i n g Officer has no obligation in law to establish anything beyond despatch of the purpose of satisfying the requirement about "supply". If gazette publication was not one of the conditions stipulated under the rule it could perhaps have been argued with force that the Returning Officer has a obligation to establish not only despatch but also receipt. Although it would have been desirable to send the list by registered post with acknowledgement due, or by a special messanger, the failure to take such precaution cannot nultify the legal effect of the despatch made by him. Accordingly I am of the view that, on the facts of this case, it has to be held—and I do so—that there was sufficient supply of the list to each of the contesting candidates.

20. Then the other question is whether supply which has not been followed by publication in the gazette is sufficient compliance with the sub-rule. Ordinarilly publication follows supply, the object of the publication being to ensure, that what is "supplied" is, at any rate, in law, brought to the notice of the addressee. But the sequence in the present context is not mandatory. There is sufficient compliance with the sub-rule even if the publication preceded the "supply". Once publication has been made in the gazette, what is published is in law deemed to have been already brought to the notice of every individual member of the public. The subsequent supply for the personal convenience of the individual contesting candidates does not detract from the effect of the publication or derogate from the postulates of the sub-rule.

21. In the present case it has been established beyond that Ext. R1 was published in Ext. R2 gazette on 29-4-1982. It has also been, in my view, well established that Ext. R1 series had been sent by the Returning Officer to Joseph and other candidates. In the circumstances I hold that Ext. R1

list was supplied to Joseph and the other contesting candidates and was also duly published in the official gazette as required under Rule 11 (2).

22. This being the legal implication of the relevant facts it is unnecessary for me to further probe into the veracity of Joseph's statement that he did not receive Ext. R1 Even if he did not in fact receive that list, he is in law deemed to have been supplied with the list and duly notified of the same by publication in the gazette. I cannot however refrain from expressing my surprise that a contesting candidate had not been vigilant enough to keep himself informed of what was put up on the notice board of the Returning Officer, the Assistant Returning Officer and at the polling stations and also published in the gazette. I have already come to the conclusion that there was sufficient compliance with the requirements of Rule 11. Accordingly I am of the view that Rules 10 and 30 have been fully complied with.

23. Assuming that the petitioner's counsel is right in the construction which he seeks to put on the relevant statutory provisions and that there has been non-compliance with the legal provisions, even so the burden is solely upon the petitioner to establish that, on account of such non-compliance, the result of the election, in so far as it concerns the returned candidate.....i.e., the respondent has been materially affected. As I stated earlier, there is no evidence whatsoever to support the petitioner's plea on this point. The three witnesses whose evidence is relied upon by the petitioner for this purpose have failed him completely. The effect of their evidence is that they had no difficulty in exercising their franchise for the person of their choice. While Krishnan (P.W.4) and Sreedharan (P.W.5) could read the names without the slightest difficulty, Lakshmi (P.W.11) had no difficulty in recognising the symbol. In fact her difficulty was in recognising the place of the candidate because the ballot paper was shown to her upside down. It is, in my view, preposterous to suggest that an elector, however illiterate he or she may be, was instructed to vote not by the symbol but by the place of a candidate's name in the list. I should have thought that it was much easier to instruct a person by the symbol rather than by such abstract noting of place which is relative as is clear from the evidence of P.W. 5. Whether the name is first or last depends upon how the ballot papers is held in the hands of an illiterate person who cannot noice the difference when the names are seen upside down. The evidence shows that posters had appeared everywhere and announcements were made frequently on loud speakers as to the symbol of the candidates. No effort appears to have been spared by the petitioner to impress upon his supporters the symbol allotted to him. There is no evidence to show that the electors did not bear the symbol in mind, but only the place of the person's name, when they exercised franchise. The burden to establish that the illiterate electorate of Pathanamthitta Constituency went by the place or position of a persons name in the list and not by his symbol was upon the petitioner. The petitioner has totally failed in this respect. In the circumstances there is no evidence whatever to show that the result of the election, in so far as it concerns the returned candidate, has been materially affected by reason

of any non-compliance with the law. Accordingly Issue No. 2 is found against the petitioner. (See the principles stated in *Packai Haokip* v. *Rishang*- A.I.R. 1969 S.C. 663; *Mahedeo* v. *Babu Udai Partap Singh* – 1966 D.E.C. 54; *Hari Vishnu Kamath* v. *Ahmad Ishaque* A.I.R. 1955 S.C. 233; and *Vashist Harain Sharma* v. *Dev Chandra* A.I.R. 1954 S.C. 513).

24. *Issue No.* 3. One of the principal allegation is that the respondent committed the corrupt practice of bribary within the meaning of section 123 (1) of the Act. The contention is that the respondent's posters showing the outlines of the proposed Pathanamthitta district encircling his symbol "cycle" was an attempt to identify the respondent in the minds of Voters with the formation of the new district so much so that the electorate were led to believe that unless and until the respondent was elected, the new district would not be formed. This the petitioner says was an offer and a promise to the electorate amounting to bribery within the meaning of subsection (1) of section 123. The burden is upon the petitioner to prove this charge beyond reasonable doubt- A. I. R. 1976 S.C. 1836, para. 20.

25. There is no suggestion that, apart from the posters, any attempt was made by speeches or house-to house propaganda or by publication of pamphlets and the like, to identify the respondent with the district. The allegation as well as the oral and documentary evidence are confined solely to posters. It is the visual impression conveyed by the posters that is sought to be made use of by the petitioner in support of his plea. P. Ws. 1, 2, 6 and 7 are the witnesses who speak on the point. P. W. 1 is the petitioner himself and P. Ws. 2 and 6 are active supporter of Joseph (P.W.7). So their evidence has to be viewed with certain amount of circumspection. Exts. P4 and P4(a) are the two posters pointed out by the petitioner as evidence of bribery. These two posters contain the outlines of a certain place. They are published by one Sasidharan for the U.D.F. Election Committee. Looking at the outlines an unistructed person might believe that they represent the constituency, for the posters contain an appeal to vote for the symbol "cycle" which is shown within the outlines. There is nothing to connect the outlines in Exts. P4 and P4(a) with the then proposed Pathanamthitta district. At the time of the election the district had not come into existence and the areas that would be covered by the district were still a matter of speculation. But referring to the outline in Ext. P6 the petitioner says that it represented the then proposed district. Ext. P6 which was published by the District Formation Committee (പത്തനംതിട്ട ജില്ലാ രൂപവൽക്കരണസമിതി) was apparently meant to convey the idea that the proposed district should comprise the places mentioned in the outline, viz., Ranny, Kozhencherry, Pathanamthitta, Konni and Pathanapuram. The borders of the district are clearly shown in Ext. P6. But Ext. P6 was not a poster made for the election. There is no case that Ext. P6 had been distributed during the election. The evidence shows that what was distributed by or on behalf of the respondent during the election was only Exts. P4 and P4 (a). It is true that the outlines in Exts. P4 and P4 (a) agree with the outline in Ext. P6. But since Ext. P6 is not stated to have been circulated

during the election there is no possibility of connecting the places mentioned in Ext. P6 with the outlines in Exts. P4 and P4 (a). I should therefore have thought that, by looking at Exts. P4 and P4 (a), the electorate would not have been led to believe that the outlines represented the proposed district and not the Pathanamthitta constituency in which the election was being held. Assuming that the petitioner was right in his apprehension that Exts. P4& P4 (a) would have conveyed the impression that the outlines represented the proposed district, it would still only mean that the respondent projected himself as a champion of the cause which was so dear to the electorate, viz., the achievement of a district. That was a public cause, which, like any other public cause, he supported, and for which he was willing to fight, if given a chance to represent the constituency in the legislature. The evidence of K.V. Joseph, and other witnesses who spoke in support of the petitioner is that the formation of the new district has always had the unanimous support of the people of Pathanamthitta ever since the time of Vayala Idiculla who once represented the constituency. The new District has been the ardent desire of the people and they have been clamouring for it. The outlines do not in any manner suggest that the respondent alone was the champion of the cause. If at all they meant that the respondent supported the cause and would fight for it in the legislature if elected to it. This by no means is a bargain for votes or a bribery and offer to the electorate. See the principles stated by the Supreme Court in **Mrs. Om Prabha Jain v. Abanash Chand** (A.I.R. 1968 S.C. 1088), **Ghasi Ram v. Dal Singh** (A.I.R. 1968 S. C. 1191); **Iqbal Singh v. S. Gurdas Singh** (1976-I S. C. R. 884). I am not satisfied that the oral and documentary evidence relied on by the petitioner support the charge of corrupt practice within the meaning of section 123(1). Issue No. 3 is accordingly found against the petitioner.

26. Issue No. 5. for the reasons which I have stated above, this issue is also found against the petitioner.

27. *Issue No.* 6. There is no evidence whatever to prove that the election of the respondent is void for any of the reasons urged on behalf of the petitioner. In the circumstances the petitioner is not entitled to any relief in this proceedings. The election petition is accordingly dismissed with costs.

28. The petitioner shall pay to the respondent a sum of Rs. 2,000 as his costs towards which the amount deposited by the petitioner in this court shall be adjusted.

29. The Registrar shall immediately intimate the substance of this decision to the Election commission and the Speaker of the Kerala Legislative Assembly and shall therefter send as urgently as possible an authonticated copy of this judgment to the Election Commission, as required under section 103 of the Representation of the people Act, 1951.

(Sd.)

3rd February, 1981. T. KOCHU THOMMEN,

(True copy) *Judge.*

APPENDIX

Petitioner's Exts.	
Ext. P1 dated 12-5-1982	Photo approved in page-5 in Deepika Daily
,, P2(a) ,, do.	Title to do. do.
,, P2 do.	Photo appeared in page-1 it Malayalamanorama daily
,, P2(a) do.	Report published in page 1 do.
,, P3 Nil	Model Ballot
,, P4 Nil	Wall Poster of K. K. Nair
,, P4(a) Nil	do.
Ext. P5 dated 8-5-1982	Photo published in the first page in the Malayalam morama daily.
Ext. P6 do.	Wall poster published by Pathanamthitta District Formation Samithi
Ext. P7 28-1-1982	List of candidate of No. 112 Pathanamthitta L. A. C. in Form No. 4A
Ext. P7(a) do.	do. do. in English
Ext. P8 Nil	Model Ballot
Respondent's Exts.	
R1 dated 5-5-1982	List contesting candidates in Form No. 7A
R1(a) 5-5-1982	do. do. in English
R(b) ,, do.	Letter No. LA4/32707/82(2) of the Returning Officer
R2 dated 29-4-1982	Election notification published as Extraordinary Gazette (No. 2510/EL1/82/EK)
R2(a) 29-4-1982	Page 117 of do.
R3 dated 10-2-1982	Copy of order No. G.O.MS. No. 203/82/RD

Petitioner's Witness

1. T. S. Abraham
2. K. V. Titus
3. Baby Skaria
4. K. K. Krishnan
5. M. Sreedharan
6. Suresh Babu

7. K. V. Joseph
8. K. M. Mathew
9. Fr. Victor A. Narivelly
10. V. N. Unni
11. Lakshmi

Respondent's witness

1. K. K. Nair
2. S. Sivruthan

Costs to the Respondent Rs. 2,000

By order,

M. L. WAHI,

Under Secretary to the Election Commission of India
